

### REMARKS

As an initial matter, applicants note that Response A, submitted January 17, 2007, did not elect "threaded" embodiments as asserted by the Office Action mailed April 18, 2007. Rather, applicants elected metal and patellar tendon species, both of which could be threaded or non-threaded. The initial restriction requirement mailed November 17, 2006 required an election between metal or plastic materials, and implants for Patellar, Achilles, Central Quad, or Hamstring tendons, or artificial ligament materials. The restriction requirement did not require restriction of claims related to threaded or non-threaded embodiments, nor did applicants elect claims directed to threaded or non-threaded embodiments. Accordingly, applicants respectfully submit that the embodiment of Figure 1 remains under consideration.

In order to be responsive to the election or restriction requirement set forth in the Office Action, applicants hereby elect the species of Figure 1, that is claims 42, 43, 61, 62, 67, 72-80, 83, 84, and 87-89. Applicants note that the restriction requirement did not provide an option to elect the species of Figure 1. However, as discussed above, the species of Figure 1 clearly remains to be considered. It is noted that claim 42 is believed to be generic such that the claims that depend therefrom remain for consideration upon the allowance of claim 42.

Similar to the election made in Response A, this election is made with traverse for the following reasons: The key aspects of the restricted claims are similar to the key aspects of the elected

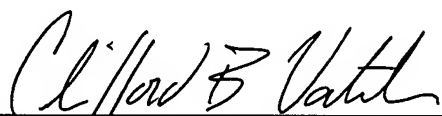
claims. Applicants respectfully submit that claims 42-93, though different in scope, are nonetheless sufficiently similar to merit examination in the same application, as they share dominant elements. Examination of all claims 42-93 in the same application would not pose a serious burden under M.P.E.P. § 803 because there is commonality of dominant elements between the claims of the various species, and the claims covering the species are dependent claims which depend from an independent claim that is generic to the species. In a balance of the equities, the burden and cost to applicants of withdrawing dependent claims drawn to inventions having common dominant elements appears to outweigh the burden on the Examiner to search and examine the present application as a unitary invention. Applicants therefore respectfully request that the election or restriction requirement be withdrawn.

In view of the foregoing, applicants believe that claims 42-93 are all allowable and the same is respectfully requested. If any impediment to the allowance of these claims remains after entry of this Response, and such impediment could be alleviated during a telephone interview, the Examiner is invited to initiate the same.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Response to Deposit Account No. 50-0836.

DATED this 18<sup>th</sup> day of June, 2007.

Respectfully submitted,

  
\_\_\_\_\_  
Clifford B. Vaterlaus  
Attorney Registration No. 47,261  
Attorney for Applicant

Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, UT 84091  
Telephone: (801) 255-5335  
Facsimile: (801) 255-5338

KRC/CBV/

S:\CHC Files\T 5--\T5353\A.CON\3\resp B to restriction.wpd